

**POST-USTA II AMENDMENT TO INTERCONNECTION AGREEMENT
BETWEEN
WISCONSIN BELL, INC. d/b/a SBC WISCONSIN
AND
CLOSECALL AMERICA, INC.**

This is a Post-USTA II Amendment (the "Amendment") to the Interconnection Agreement by and between Wisconsin Bell, Inc. d/b/a SBC Wisconsin ("SBC Wisconsin") and CloseCall America, Inc. ("CLEC") (collectively referred to as "the Parties") ("Agreement") previously entered into by and between the Parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*") on March 2, 2004 and its mandate on June 16, 2004;

WHEREAS, the *USTA II* decision vacated certain of the Federal Communications Commission ("FCC") rules requiring the provision of certain unbundled network elements, and therefore, SBC Wisconsin is no longer legally obligated to provide these unbundled network elements to CLEC under federal law;

WHEREAS, the Parties wish to amend the Agreement, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, to ensure that the obligations related to unbundled network elements remain consistent with applicable law; and

NOW, THEREFORE, in consideration of the foregoing, and the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. Pursuant to the decision in *United States Telecom Ass'n v. F.C.C.*, 359 F.3d 554 (D.C. Cir. 2004), effective immediately, SBC Wisconsin is not required, pursuant to this Agreement, to provide to CLEC, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality: switching (per vacatur of 47 C.F.R. § 51.319(d)(2),(5)); DS1, DS3 and dark fiber dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); or DS1, DS3 and dark fiber loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(6),(7)); provided, however, that as to switching for customer locations with 1 to 3 lines (per vacatur of 47 C.F.R. § 51.319(d)(2),(5)); DS1 and DS3 dedicated transport (per vacatur of 47 C.F.R. § 51.319(e)); or DS1 and DS3 loops (per vacatur of 47 C.F.R. § 51.319(a)(4),(5),(7)), this provision shall become effective on and after January 1, 2005.
2. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC*, et. al, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including this and any other amendments to the Agreement), SBC Wisconsin shall have no obligation to provide UNEs, combinations of UNEs, combinations of UNE(s) and CLEC's own elements or UNEs in commingled

arrangements beyond those required by the Act, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). The Parties acknowledge and agree that SBC Wisconsin has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") in Wisconsin and as of the date of that election by SBC Wisconsin, the FCC Plan shall apply to this Agreement, as more specifically provided for in a separate Reciprocal Compensation Amendment. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

3. The Parties acknowledge and agree that this Amendment shall be filed with, and is subject to approval by the Public Service Commission of Wisconsin and shall become effective ten (10) days following the date upon which such Commission approves this amendment under Section 252(e) of the Act or, absent such Commission approval, the date this amendment is deemed approved by operation of law.